

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

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**MIKAL SMITH,**

**Petitioner,**

**-against-**

**T. GRIFFEN,**

**Respondent.**  
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**1:15-cv-622 (ALC)**

**ORDER**

**ANDREW L. CARTER, JR., United States District Judge:**

Petitioner, then incarcerated at Green Haven Correctional Facility, commenced this action for habeas corpus on January 28, 2015. ECF No. 1. According to public records, the New York State Department of Corrections & Community Supervision (“DOCCS”) released petitioner to parole on February 2, 2015. Petitioner did not inform the Court or respondent of any change of address upon his release, but appeared at a July 15, 2015 telephonic status conference and provided an updated Brooklyn address. *See* ECF No. 11. Subsequently, respondent made two attempts to serve petitioner with an answer at that address which proved unsuccessful. *See* ECF No. 17-19.

On October 1, 2015, this matter was referred to United States Magistrate Judge Frank Maas, and later re-designated to Magistrate Judge Barbara Moses. ECF No. 20 & 21. On July 18, 2017, having received no communications from petitioner since the 2015 telephonic conference, Judge Moses ordered petitioner to advise the Court, in writing, no later than August 17, 2017, if he wished to proceed with this action. ECF No. 21. Judge Moses informed petitioner that if the Court did “not receive a written submission from petitioner by that date,” the Court “will recommend that this action be dismissed.” *Id.* That order was mailed to petitioner at his Brooklyn address. ECF No. 22. After petitioner failed to respond, Judge Moses issued a

Report and Recommendation ("R&R") on August 31, 2017, recommending that the case be dismissed pursuant to Rule 41(b) of the Federal Rules of Civil Procedure. *Id.* Objections to Judge Moses' R&R were due on September 14, 2017, but petitioner has not filed any objections.

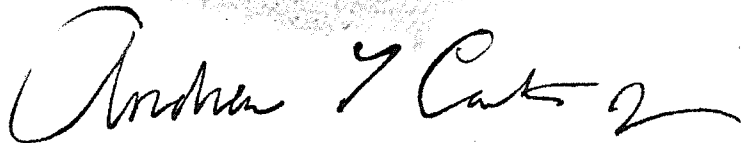
Because no timely objection was made, the Court "need only satisfy itself that there is no clear error on the face of the record" to adopt the R&R. *Figueroa v. Riverbay Corp.*, No. 06-cv-5364 (PAC) (KNF), 2006 WL 3804581, at \*1 (S.D.N.Y. Dec. 22, 2006) (quoting *Wilds v. United Parcel Serv.*, 262 F. Supp. 2d 163, 169 (S.D.N.Y. 2003)). The Court finds no clear error in the record and adopts the R&R in its entirety.

For the reasons stated, it is hereby **ORDERED** that the above-captioned action be dismissed with prejudice pursuant to Rule 41(b) if petitioner does not communicate with the Court in writing, affirming his intention to prosecute this action, within thirty days of this order.

The Clerk of the Court is respectfully directed to mail a copy of this Order to petitioner.

**SO ORDERED.**

**Dated: October 5, 2017**  
New York, New York

A handwritten signature in black ink, appearing to read "Andrew L. Carter, Jr.", written over a horizontal line.

**ANDREW L. CARTER, JR.**  
United States District Judge